

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 452

Docket No. MC2018-185

Competitive Product Prices
Priority Mail Contract 452 (MC2018-185)
Negotiated Service Agreement

Docket No. CP2018-259

PUBLIC REPRESENTATIVE COMMENTS ON THE
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD PRIORITY MAIL
CONTRACT 452 TO COMPETITIVE PRODUCT LIST

(June 29, 2018)

The Public Representative hereby provides comments pursuant to Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Request to add Priority Mail Contract 452 to the competitive product list.² The Postal Service's Request includes copies filed under seal of — Governor's Decision No. 11-6 (Governor's Opinion), the proposed contract (Contract) and supporting financial data (Financial Data); the proposed changes in the Mail Classification Schedule product list (Attachment C); a Statement of Supporting Justification (Attachment D) as required by 39 C.F.R. §3020.32; and a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3) (Attachment E).

According to the Postal Service, Priority Mail Contract 452 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3).

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, June 21, 2018

² Request of the United States Postal Service to Add Priority Mail Contract 452 to the Competitive Product List and Notice of Filing Materials Under Seal, June 21, 2018 (Request).

Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6, Id.; that the Statement of Supporting Justification provides support for adding Priority Mail Contract 452 to the competitive product list, Attachment D; and the compliance of the contract with 39 U.S.C. § 3633(a), Attachment A at 1.

The contract's effective date will be set two (2) business days following the date on which the Commission issues all necessary regulatory approval. Contract at 4. The contract is set to expire three (3) years from the effective date, unless 1) terminated by either Party within 30 days' notice with applicable restrictions, 2) renewed by mutual agreement in writing, 3) superseded by a subsequent Agreement between the Parties, 4) ordered by the Commission or a court, or 5) required to comply with subsequently enacted legislation. Id.

COMMENTS

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, as well as the instant contract and the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 452 should be classified as a competitive product and added to the competitive product list. In addition, it appears that Priority Mail Contract 452 should generate sufficient revenues to cover costs during the first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 452 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Attachment D. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Contract 452 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

Based upon a review of the financial data, the negotiated prices for Priority Mail Contract 452 should generate sufficient revenues to cover its attributable costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a). Although the contract is expected to remain in effect for a period of three years, the Postal Service does not provide financial data to demonstrate the contract's compliance with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. However, the Contract allows for price adjustments which should permit the Contract to cover attributable costs in those years. The Public Representative concludes that the risk that revenues will fail to cover costs during years 2 and 3 is minimal. The Commission also has an opportunity to review the compliance issues related to this Contract in the next Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

/s/ *Lawrence Fenster*
Lawrence Fenster
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6862
lawrence.fenster@prc.gov